

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 22-60043
FREE SPEECH SYSTEMS, LLC, . Chapter 11
Debtor. . 515 Rusk Street
Houston, TX 77002
Tuesday, September 26, 2023
2:03 p.m.

TRANSCRIPT OF DEBTOR'S EMERGENCY MOTION FOR AN INTERIM AND
FINAL ORDERS (I) AUTHORIZING THE USE OF CASH COLLATERAL
PURSUANT TO SECTIONS 105, 361, AND 363 OF THE BANKRUPTCY CODE
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(B)
AND (II) GRANTING ADEQUATE PROTECTION TO THE
PREPETITION SECURED LENDER [6]
BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commence at 2:03 p.m.)

2 THE COURT: Okay. Good afternoon, everyone. This is
3 Judge Lopez. Today is September 26. I'm going to call the 2
4 p.m. case, Free Speech Systems, 22-60043, on a continued cash
5 collateral hearing. If you know you're going to be speaking
6 today, I'd ask that you please hit "five star" and I will
7 unmute your line. Why don't I take appearances in the
8 courtroom, and then we will turn to the phone line?

9 Mr. Battaglia. Good afternoon.

10 MR. BATTAGLIA: Afternoon, Your Honor. Ray Battaglia
11 for Free Speech Systems, Patrick McGill, the chief
12 restructuring officer in the courtroom.

13 THE COURT: Good afternoon, Mr. McGill.

14 MR. BATTAGLIA: Jeff Schulse (phonetic) may be on the
15 line to the extent there's some questions that may be addressed
16 later.

17 THE COURT: Okay. Great. Thank you.

18 MS. HASELDEN: Good afternoon, Your Honor. Melissa
19 Haselden. And I believe Ms. Liz Freeman is on video, the
20 Subchapter V --

21 THE COURT: Okay. Good afternoon.

22 Ms. Driver, good afternoon.

23 MS. DRIVER: Good afternoon, Your Honor. Vickie
24 Driver on behalf of Mr. Jones, the 100 percent owner of Free
25 Speech Systems. I don't know if we're jointly calling his case



1 today, but if anything comes up, I'm here. Thank you.

2 THE COURT: Okay. Thank you.

3 Okay. I'm just going to go in the order in which I
4 see the unmuted lines. 713 number? 713 -- last three digits
5 666, number, I've just unmuted.

6 MS. HARDY: Good afternoon, Your Honor. Jennifer
7 Hardy of Willkie Farr on behalf of the Texas plaintiffs.

8 THE COURT: Good afternoon, Ms. Hardy.

9 There's a 202 number.

10 MR. RUFF: Good afternoon, Your Honor. Jayson Ruff
11 for the U.S. Trustee.

12 THE COURT: Okay. Good afternoon, Mr. Ruff.

13 And I got a couple more. Here's another, is a 212
14 number.

15 MR. KIMPLER: Good afternoon, Your Honor. Kyle
16 Kimpler for the Connecticut plaintiffs. And I'm here today
17 with my co-counsel, Mr. Ryan Chapple.

18 THE COURT: Okay. Good afternoon.

19 512 number?

20 MR. LEMMON: Your Honor, Steve Lemmon for PQPR.

21 THE COURT: Good afternoon, Mr. Lemmon.

22 There's another 212 number.

23 MS. BRAUNER: Good afternoon, Your Honor. Sara
24 Brauner, Akin Gump Straus Hauer & Feld on behalf of the
25 Committee, and with me is my partner, Katherine Porter.



1 THE COURT: Good afternoon to both of you.

2 And here's a 713 number.

3 MS. FREEMAN: Good afternoon, Your Honor. Liz
4 Freeman on behalf of Melissa Haselden, the Subchapter V
5 Trustee.

6 THE COURT: Okay. Good afternoon.

7 That's all that I see. Anyone else wish to make an
8 appearance, just hit "five star" and I will recognize you in a
9 moment.

10 If not, why don't I turn it over to Mr. Battaglia?

11 MR. BATTAGLIA: Good afternoon, Your Honor. Ray
12 Battaglia for Free Speech Systems. There's only one matter on
13 the docket today. There are a couple of things that are
14 implicated in it, and I'll discuss those, and we'll take that
15 as far as the Court would like to hear.

16 THE COURT: Okay.

17 MR. BATTAGLIA: The -- this is -- the sixteenth cash
18 collateral order has been uploaded and previously submitted to
19 the constituents for review and comment, and I've received none
20 or have received approvals, as the case may be. There's one
21 textual change in the order.

22 The order, to date, has provided that we will
23 maintain a DIP account at Access Bank, which has been the
24 debtors' banking -- DIP banking institution since the petition
25 was filed. Some events happened last week that I'll discuss in



1 fullness in a minute, but generally speaking, they shut our
2 accounts down last Thursday without notice or warning. And so
3 the order provides that we'll maintain the accounts at Axos or
4 another bank approved by the Court, or a DIP account approved
5 by the Court.

6 We're not sure at this point what we're going to do
7 with our bank. I guess I may as well just jump into it now, no
8 time like the present. Both Mr. McGill and I were out of the
9 country last week and got some frantic messages from
10 Mr. Schulse that the bank balances were at zero on Thursday
11 morning, when the account balances we show at over \$2 million.
12 Contacted Access Bank and were advised that the accounts had
13 been shut down and that they would mail a cashier's check to us
14 for the funds in the bank account, which to say was startling
15 is a gross understatement to a debtor that's an operating
16 entity that has payroll and other obligations that have to be
17 met on a current basis.

18 They indicated -- and Ms. Driver jumped in to the
19 breach and had some communications with Access Bank, with their
20 general counsel, and prepared and drafted a motion. I know
21 your courtroom staff was aware that we might have been
22 requesting a hearing on an emergency basis last Thursday to
23 deal with this issue.

24 And the -- frankly, the excuses sound more than a bit
25 pretextual to me, that they contacted us in July about a



1 transaction, and we hadn't responded. There's only one person
2 on the bank account sitting -- and he's sitting right here, and
3 there has been no communication about any concerning
4 transactions. And then, I think they said that there were
5 unauthorized transactions, which, of course, there are not.
6 We're here regularly with a cash collateral order and a budget.
7 We're here every month with MORs that have copies of the bank
8 statements attached to them.

9 So -- and they also indicated that they had talked to
10 someone, again, about closing the account, that there had, in
11 fact, been notice. They certainly didn't talk to me. I know
12 they didn't talk to Mr. McGill. I'm not sure who else they
13 could have talked to. Mr. McGill is the only check signer.

14 So we're perplexed. We have no answers for the
15 Court, and they've not provided us any beyond what I've just
16 related to you. They've told us that, in light of Ms. Driver's
17 efforts to file a motion, that they would reinstate the
18 accounts for 30 days. Initially, it said pending a response on
19 these transactions, which they've still not shared with us,
20 they might extend it further. It's unclear, frankly. The
21 later emails seem to suggest they have no intention of
22 extending the relationship beyond 30 days, which started
23 running last Thursday. So we're deeply concerned.

24 I have a call with Mr. Epstein about what a DIP bank
25 is doing, why they're doing this to a debtor, and its



1 creditors. And Mr. Epstein hasn't called me back. That's
2 neither here nor there. That was Thursday.

3 But we're deeply concerned about this. And so there
4 is a provision in the order that at least contemplates maybe
5 having to move our DIP bank account somewhere else in the near
6 future. And we may be before this Court again seeking some
7 relief against them or seeking another banking platform because
8 we just don't know who will bank us, for the reasons you've
9 heard over and over in front of this Court.

10 So I -- that's what I have to offer on that
11 particular issue. And if the Court has any questions,
12 Mr. Schulse's on the line.

13 THE COURT: No, just let me know if you need
14 anything. I'll be here.

15 MR. BATTAGLIA: Okay. The second thing that's a --
16 I'll say it's implicated in the cash collateral order. It's
17 really sort of not, is that we've reached an agreement with ESG
18 and with the Jones estate about the distribution of platinum
19 monies which you heard come up. And there was a contract
20 between Alex Jones and ESG, and then a contract between ESG and
21 FSS dealing with the sale of certain platinum products.

22 The contract was terminated on our end. Ms. Driver,
23 on behalf of the Jones estate, filed a motion to reject the
24 executory contract, left a whole lot of he-said-she-said finger
25 pointing going on. In the meantime, Free Speech System stopped



1 distributing the monies to ESG and has held them in trust.
2 Technically -- well, contractually, we would pay ESG, and they
3 would make a disbursement to the Jones estate, and we would
4 hold back the monies that we were entitled to keep. And in
5 light of the dispute, we simply stopped distributing and all
6 parties were aware of that.

7 We've been working on the accounting, back and forth
8 and back and forth, to make sure that all three parties were
9 comfortable that the distribution that was going to be made was
10 in the appropriate numbers to each party, and also to allow
11 Free Speech Systems to make the disbursements as opposed to
12 sending money to ESG to send on to Alex Jones. Trust has been
13 shattered here, so it's just easier to do that.

14 And the second component is that there's still
15 platinum product in inventory, not our product, but we
16 continue -- we stopped selling it a couple of weeks ago. But
17 we will put it back on the market, and we will make
18 disbursements in accordance with the mathematical formulas.
19 But again, we will disburse directly to Alex Jones and ESG.

20 And a stipulation citing all of that has been set
21 forth. It doesn't contain any releases. It's really not a
22 9019, but it simply says we're all acknowledging that we're not
23 going to sue each other for the distributions that we're making
24 that are set out in detail in that document.

25 So if the Court deigns to sign that stipulation, we



1 will be making those disbursements. It's about \$332,000 to the
2 Jones estate. I know they desperately want it. It's -- I
3 can't remember -- 100 and some-odd to ESG, and 100 and some-odd
4 to the debtor, to FSS. And we see that as not a disbursement
5 under the cash collateral order, but as a trust fund money
6 that's not ours, that's going out. But I wanted the Court to
7 be aware that that money is going out --

8 THE COURT: Yeah. I appreciate it.

9 MR. BATTAGLIA: -- and it's not reflected in this
10 budget. It is reflected in the stipulation that's before the
11 Court.

12 I've received no comments on the cash collateral
13 order or budget and would ask the Court to approve it and set a
14 reset hearing date.

15 THE COURT: Does anyone --

16 MR. BATTAGLIA: Is there any questions the Court may
17 have?

18 THE COURT: No questions. Let me just ask, does
19 anyone wish to be heard with respect to cash collateral?

20 I have one comment, Mr. Battaglia. And I don't want
21 to -- it doesn't relate. I'm going to approve this cash
22 collateral order, and we'll get another one.

23 I have a more general comment, and it's just kind of
24 acknowledging kind of where we are in the history of this case.
25 I think we're -- I am at the point now where I don't know



1 what's going on with mediation. Obviously, I don't know what's
2 going on, but I'm ending it, to the extent that anything's
3 there. I will officially end any mediation that's going on
4 between the parties. I think it is now time for Free Speech to
5 put a plan together and tell me what they want to do and go
6 forth with something and whatever's going to -- I don't -- I'm
7 not in -- I don't know what you're proposing, but it's just
8 time to propose something. And I know that you had something
9 at one point, so it's not to insinuate that you didn't. It's
10 just now time to go up, down, or somewhere in with -- in
11 connection with that.

12 And so I know I was the one saying, you know, parties
13 should continue to talk and hold it off. I'm just ending that
14 officially so that it's clear. My deep gratitude to Judge
15 Isgur for all his efforts. I don't know where this leaves the
16 parties. I just am making an affirmative statement.

17 I'm just about done, I guess, I -- not calling the
18 Jones case, but y'all are all here, I can tell you, I'm just
19 about done with the decisions. You'll have something no later
20 than kind of the week of October 10, maybe. The 9th is the
21 federal holiday, so it may be like the 10th or the 11th or
22 12th, somewhere in there you'll have the -- both -- you'll have
23 a decision in the Texas and in the Connecticut case so that'll
24 get posted then, probably wouldn't look for anything before
25 that week. May just take the weekend and make sure my



1 Bluebooking and all that stuff is right. But that's when
2 you'll have it. So it, like -- that will be what it is and
3 those decisions -- that decision will be rendered at that
4 point.

5 That'll -- I think I need Free Speech to kind of
6 coincide and do something. And I'm -- I don't want to be the
7 one encouraging mediation anymore. So I want to -- it's just
8 time to just -- and we'll see where things go. Everybody's
9 been working hard at -- just looking, there's -- everybody's
10 been doing everything I've asked them to do. You know, I don't
11 want to get to an 18th.

12 MR. BATTAGLIA: Understood, Your Honor. And
13 obviously, the summary judgment motions are -- there was a
14 little bit of no, you ask him, you ask him --

15 THE COURT: Yeah, yeah, yeah.

16 MR. BATTAGLIA: -- you ask him before you walked in
17 here. Nobody likes to ask a --

18 THE COURT: Oh, I know.

19 MR. BATTAGLIA: -- judge on a difficult issue that is
20 pending. So we appreciate and understand the time it takes.
21 And -- but that's something that the parties seem to think
22 will -- may move the needle. I'm honestly not sure why it
23 would or should, but it may, and that's fine. We continue to
24 talk and will continue to talk. The issue from the Free Speech
25 side is really a -- the conversations with me are few and far



1 between because the issue is really on the Jones side and what
2 they want to do. And --

3 THE COURT: Yeah, I know. That's what I'm saying. I
4 want you and Mr. McGill put something forward, and whatever you
5 feel like you got to do. Y'all are here and make a decision
6 about what -- the course that you think this case should go.
7 But I want to see something as soon as you can get it to me.
8 And if you get a plan on -- you already have one, but if you
9 want to take it and file it, I want to set dates to it. I want
10 to go forward.

11 MR. BATTAGLIA: We'll be modifying it. The structure
12 has some tax issues that we needed to address, and we've hired
13 Hap May as the accountant --

14 THE COURT: Okay.

15 MR. BATTAGLIA: -- to come up with some structure to
16 deal with that, and he's come up with some thoughts and ideas
17 that need to be incorporated. But I don't think, conceptually,
18 the plan will change all that much. I mean, it's a Sub V. We
19 contribute net disposable income to payments under the plan for
20 five years. It's just not that -- it's not that hard.

21 THE COURT: Yeah. That's what I want to do. And I'm
22 hoping by, you know, mid-November, early December, you know, we
23 take it up for consideration on a final basis. I want to
24 just -- I think y'all are -- that's kind of -- I just wanted --
25 I wanted to just come out and say it --



1 MR. BATTAGLIA: Yes, sir.

2 THE COURT: -- as well as kind of give you an
3 indication as to kind of where things stood on the decision
4 there. I think that's all I'll say. Not -- today's not the
5 day for me to take up anything else. I'll sign this order.
6 With that being said --

7 MR. BATTAGLIA: Your Honor, one other thing that's in
8 the budget that I didn't mention, and what came up at the last
9 hearing, is there's a \$16,000 line item for basically discovery
10 costs --

11 THE COURT: Yeah, yep, yep. I saw it.

12 MR. BATTAGLIA: -- related to e-discovery. I found a
13 vendor. The database was considerably larger than I thought,
14 but at \$7 a gig, as opposed to \$30 a gig, the mainline price
15 has come down considerably. And I've started looking through
16 the database. It took a -- and this to answer a question
17 Ms. Brauner's associate asked. The database was not completely
18 uploaded until yesterday, so I've started playing around with
19 my simple knowledge of the software, and we'll get smarter and
20 hopefully have that done early in October, if not the end of
21 September.

22 THE COURT: And what I'd like to do, and I know I'm
23 asking the parties, so maybe you all can think about this, I'd
24 like to extend cash collateral through November 13th. And I
25 want to -- I don't want to do this every month. I want to go



1 November 13th, and I want you to have a plan on file as soon as
2 you can. Then, we can just then talk about another cash -- if
3 we need to do another further in, and then kind of see where
4 things are, really kind of advancing where we're going. And I
5 don't want -- I'd rather have a conversation about that.

6 If you get something on file, I'm not telling you
7 when to do it -- but you know, we can have that date,
8 November -- like that Monday, November -- let me make sure I'm
9 making something up correctly. Yes, there is a Monday,
10 November 13, and it's open now. Maybe we can just kind of meet
11 early in the afternoon that day, and if there's something on
12 file by then, then we can have a conversation about kind of
13 confirmation issues and -- or where things go.

14 And I want everything wrapped up, discussion about --
15 you know, anything, any investigations with anyone else in
16 terms of what you're going to do, if anything, with respect to
17 other parties and whatever it is. We're just going to make --
18 go up or down on everything at that point.

19 MR. BATTAGLIA: Your Honor, our budget goes through
20 the end of October. Would you like me to submit a two-week
21 budget?

22 THE COURT: No, I'm just pushing it out. If you can
23 stay on those terms, which is kind of what you've been doing,
24 then do that. Yeah, I'm not -- if you need to submit a
25 revised, you can.



1 MR. BATTAGLIA: I will because it'll -- it's
2 literally a week-by-week budget, so there's two weeks that will
3 be covered. And I can up --

4 THE COURT: Yeah. Why don't you do that? I'm hoping
5 the parties -- I'm hoping there's no disagreement on that. I
6 just want -- you can see where I'm headed. And I don't --

7 MR. BATTAGLIA: Sure.

8 THE COURT: Maybe we can all have a discussion.

9 MR. BATTAGLIA: Or I'll just circulate the budget.
10 If nobody has any objections, we'll consider that to be the
11 budget without a further order of the Court.

12 THE COURT: That's perfect.

13 MR. BATTAGLIA: And maybe we'll come before you.

14 THE COURT: If anything in there, you know,
15 anything -- you've been great in terms of disclosing things.
16 If there's anything there --

17 MR. BATTAGLIA: Yes, sir.

18 THE COURT: -- it may be easier to just upload. No,
19 why don't you just -- if there's a revised one, just file it.

20 MR. BATTAGLIA: I'll do a notice of a revised budget.
21 That's what I'll do. That's all I had, Your Honor.

22 THE COURT: All right. That's all I had, too.
23 That's -- I'll open it up at this point.

24 Ms. Driver?

25 MS. DRIVER: Your Honor, I'm just following up on



1 something that Mr. Battaglia said. We did file that
2 stipulation in both the Jones and the FSS cases. The Jones
3 case, it's at Docket Number 448, and for Free Speech, it was
4 721. It's exactly the same stipulation in both cases.

5 But I believe that -- one thing that I've represented
6 to the Committee, that I'll just represent on the record, that
7 any of the funds that come into the Jones estate are earmarked
8 and will solely be used for professional fees. So it's near
9 and dear to my heart when that can get entered. So we would
10 appreciate it if Your Honor could take a look at that.

11 THE COURT: Okay. No, no, I certainly will. And
12 I'll open it up. Thank you.

13 MS. DRIVER: Thank you very much, Your Honor.

14 THE COURT: Okay. Let me just open it up. Does
15 anyone wish to address the Court on anything? I don't want
16 this -- I probably opened up a door, but I thought it was
17 important to just talk about. If anyone wants to just mention
18 anything, discuss anything with me, just let me know. Okay?

19 MR. BATTAGLIA: Your Honor, did you have a time on
20 November 13?

21 THE COURT: Yeah, I'm going to put one o'clock.
22 That's always subject to Ms. Saldana reaching for -- telling me
23 something. Why don't we just pencil that in?

24 And if you do get kind of a revised plan on file,
25 Mr. Battaglia, I'd -- I don't know if it's possible, but I sure



1 would like something in the next 20 days, if you could, on
2 file, and we'll kind of take it up from there.

3 Mr. Ruff, I probably -- I'm probably echoing a
4 sentiment that the trustee has, I think, something trustee
5 raised earlier, a couple of months ago. I think it's here
6 and -- yes. Yeah. I will -- well, if it's okay with the
7 parties, I will -- I guess you all can tell Judge Isgur that
8 I -- what I said on the record. I don't want to get in -- I
9 think I want to keep a complete independence about anything
10 that is discussed in connection with the mediation at that
11 point.

12 And that doesn't mean parties shouldn't continue to
13 talk. It's just we're not -- you're going to put a plan, we're
14 going to go forward on something, and if something comes up,
15 we'll set some dates to plan confirmation. And you all will
16 tell me what else you need. And if you need a hearing date on
17 anything related to the bank account, you'll reach out. Okay?

18 Okay. I have signed this order, and I will take a
19 look at the stip. Let me ask you: Do you think I need to --
20 if I sign this stip, do I need to just need to enter it in
21 both, or do y'all -- do you care?

22 MR. BATTAGLIA: Probably needs to be in both.

23 THE COURT: Okay.

24 MR. BATTAGLIA: Because the deal with ESG is with
25 Alex. I mean, it's just --



1 THE COURT: But it's -- is it -- it's the same.

2 MR. BATTAGLIA: Same stip.

3 MS. DRIVER: It is word-for-word, the same thing.

4 MR. BATTAGLIA: Word-for-word, the same stip.

5 THE COURT: All righty. That makes my -- good. You
6 know, that makes my life a little easier --

7 MS. DRIVER: Other than the caption.

8 THE COURT: -- in terms of these.

9 All righty, folks. Anything else we need to talk
10 about today? Anyone wish to address the Court on anything?

11 Okay. Thanks for your time. Thank you. We're
12 adjourned.

13 (Proceedings concluded at 2:24 p.m.)

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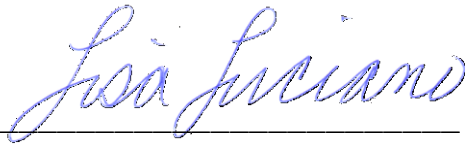
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C E R T I F I C A T I O N

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LISA LUCIANO, AAERT NO. 327

DATE: October 4, 2023

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